

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, September 22, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Town of Merton Board of Adjustment
Paul Schultz, BA04:070 and BA04:071, petitioner
Robert Grasch, BA04:070, owner
William Jage, BA04:071, owner
Robert Ullrich, BA04:072, petitioner
Bill Wondrachek, Blue River Preserve, LLC, BA04:074,
petitioner
Hazel Meissner, BA04:074, tenant
Denton Meissner, BA04:074, Hazel Meissner's son
John Grochowski, BA04:074, neighbor
Ed Nelson, BA04:074, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of September 8, 2004, with a correction in the motion regarding the decision in the case of BA04:069 Scott Salick. The revised motion should read as follows:*

"I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report with the following addition to the reasons:

In addition, the Board of Adjustment recommends to the Waukesha County Park and Planning Commission that they require that the previously existing grades be restored (change underlined).

The motion was seconded by Mr. Ward and carried with four yes votes. Mr. Bartholomew abstained because he was not present at the meeting of September 8, 2004.

NEW BUSINESS:

BA04:074 BLUE RIVER PRESERVE LLC – c/o Michael Schutte

Mr. Schultz

I make a motion to approve the staff's recommendation, as stated in the Staff Report, with Condition No. 1 changed to require the removal of the 2,075 sq. ft. shed no later than December 31, 2006. The reasons for approval are as stated in the Staff Report

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The 2,075 sq. ft. shed must be removed from the property no later than two years after the Subdivision Plat of Thousand Oaks Addition No. 6 is recorded in the Waukesha County Register of Deed's office.
2. Prior to the Director affixing his signature to the Subdivision Plat of Thousand Oaks Addition No. 6, an estimate from a licensed contractor for the cost of removing the 2,075 sq. ft. shed and a financial guarantee that the 2,075 sq. ft. shed will be removed from the property, as required above, must be submitted to the Planning and Zoning Division staff. The financial guarantee should be in the form of a letter of credit in an amount equal to 110% of the cost of removal, as set forth in the above-required cost estimate.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The request to exceed the maximum permitted accessory building floor area ratio of 3% of the lot area is a special exception, rather than a variance, and does not require the demonstration of an unnecessary hardship. Allowing the shed to remain temporarily is not hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood and is not contrary to the public interest. The approval of a special exception from the accessory building floor area ratio requirement, with the recommended conditions, will allow the occupant of the farmhouse to continue to use the shed for storage for a limited time, while still allowing the proposed lot to be created, as delineated on the Final Subdivision Plat of Thousand Oaks Addition No. 6. The recommended conditions will ensure that the extremely non-conforming shed will not remain indefinitely. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA04:071 PAUL SCHULTZ (SUNARC STUDIO) - Petitioner
WILLIAM JAGE - Owner

Note: Mr. Schultz excused himself from the Board of Adjustment meeting prior to discussing the decision in this case because he was the petitioner. He was not in the boardroom during the deliberation portion of the meeting.

Mr. Ward

I make a motion to approve the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report

The motion was seconded by Mr. Bartholomew and carried with four yes votes

The staff's recommendation was for approval, with the following conditions:

1. A Certified Survey Map showing both the re-configured Jage and Wussow properties must be prepared by a registered land surveyor and submitted to the Waukesha County Department of Parks and Land Use - Planning and Zoning Division and to the Town of Merton for review and approval. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit for the proposed remodeling and expansion.
2. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed remodeling and expansion, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
3. Any new decks, patios, or retaining walls must comply with all locational requirements of the Ordinance.
4. Prior to the issuance of a zoning permit, a complete set of house plans must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a zoning permit, an updated Plat of Survey showing the re-configured lot lines, all existing structures, and the staked-out location of the proposed addition must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will result in a more conforming situation by eliminating a non-conforming lot and making two other non-conforming lots more conforming. In addition, a severely non-conforming residence will be removed, the non-conforming offset of another residence will be eliminated, the boathouse offset will become conforming, and the non-conforming detached garage and boathouse will become conforming with respect to the maximum permitted accessory building floor area ratio. A hardship exists because the residence to be remodeled and expanded is a substantial structure, which has been permitted to be extensively remodeled twice in the past, and it would be unnecessary burdensome to require relocation of that residence in order to expand it. The proposed addition will be farther from the 100-year floodplain than the residence to be removed and it will be

sufficiently elevated above the 100-year floodplain to ensure that the residence will not be subject to flooding. Finally, the proposed floor area ratio is consistent with the maximum permitted floor area ratio that would be permitted when the property is served by municipal sewer. Therefore, the approval of this request, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA04:070 PAUL SCHULTZ (SUNARC STUDIO) - Petitioner
ROBERT GRASCH - Owner

Note: Mr. Schultz excused himself from the Board of Adjustment meeting prior to discussing the decision in this case because he was the petitioner. He was not in the boardroom during the deliberation portion of the meeting.

Mr. Bartholomew *I make a motion to approve the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Mr. Ward and carried with four yes votes.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. The proposed addition to the residence, the proposed screen porch, the proposed deck, and the proposed attached garage must all be located at least 75 ft. from the lake, in conformance with the shore setback requirement.
3. Prior to the issuance of a zoning permit, a complete set of house plans must be submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a zoning permit, an updated Plat of Survey showing the 100-year flood elevation line of 855 ft. above mean sea level and the staked-out location of the proposed addition to the residence, the proposed screen porch, the proposed deck, and the proposed attached garage, in conformance with the 75 ft. shore setback requirement, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will result in a reasonable use of the property in the form of a remodeled and slightly expanded residence with an attached garage, which will be more aesthetically appealing than the existing residence and detached garage, and will be consistent with other development in the area. A hardship exists because it would be unnecessarily burdensome to require the removal or relocation of the newer two-story portion of the residence, which is a substantial structure that is only slightly non-conforming and is in good condition, in order to permit a slightly larger residence and attached garage, as proposed. The

slope and the location of the residence are physical limitations to remodeling and expanding the existing residence. The proposed floor area ratio of 16.2% only slightly exceeds the maximum permitted floor area ratio of 15% and if the lot area were calculated to the edge of the platted road right-of-way, rather than to a base setback line 33 ft. from the centerline of the road right-of-way, the resulting floor area ratio would be a conforming 14.99%. Finally, the elevation of the residence in relation to the 100-year floodplain ensures that it will not be subject to flooding, even if the delineation of the 100-year floodplain on the Plat of Survey shows that the residence will have a floodplain setback of slightly less than the required 75 ft. Therefore, the approval of this request, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA04:072 ROBERT ULLRICH

Note: Mr. Schultz excused himself from the Board of Adjustment meeting prior to discussing the decision in this case because he was the architect for the project. He was not in the boardroom during the deliberation portion of the meeting.

Mr. Ward

I make a motion to approve the request with the following conditions:

- 1. The west lot line in the area adjacent to the residence and the detached garage must be relocated at least four feet west of its present location (which would require the owner of the adjacent lot to obtain a variance from the average lot width requirement) or a maintenance easement, which includes an area adjacent to those buildings and at least four feet from the common lot line, must be obtained from the owners of that adjacent lot to the west and recorded in the Waukesha County Register of Deed's office. The maintenance easement must be submitted to the Planning and Zoning Division staff for review and approval by the Waukesha County Corporation Counsel's office, prior to its recordation in the Waukesha County Register of Deed's office.*
- 2. The elevated wood deck attached to the lake side of the residence must be brought into conformance with the minimum offset requirement of 5.8 ft. from the west lot line.*
- 3. The steps to the lake cannot exceed 4 ft. in width.*
- 4. The Land Resources Division of the Waukesha County Department of Parks and Land Use shall review the existing retaining walls that are located between the residence and the lake, to provide technical assistance in determining whether those retaining walls are necessary for erosion control and thus whether they can be permitted to remain within the 75 ft. shore setback area.*
- 5. If it is determined that the retaining walls between the residence and the lake are necessary for erosion control and can be*

permitted to remain, the petitioner must submit a vegetation plan to the Planning and Zoning Division staff for review and approval. That plan should indicate how the retaining walls will be visually screened from the lake.

- 6. If the retaining walls that extend onto the adjacent lot to the east are determined to be necessary for erosion control, that portion of the retaining walls encroaching onto the adjacent lot to the east will be permitted to remain only if the owners of that adjacent lot grant permission, in the form of a recordable document signed by them and recorded in the Waukesha County Register of Deed's office, for them to remain.*
- 7. Both non-conforming, free-standing wood decks must be removed and the non-conforming hot tub must either be removed or relocated to a conforming location (at least 75 ft. from the lake).*
- 8. The floor area ratio on the property, including both the existing structures and the proposed addition, shall not exceed 15.5%.*
- 9. If any retaining walls are to required to be removed, a detailed grading and drainage plan showing existing and proposed grades and any portion of the retaining walls that would remain, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff, along with an application for any necessary permits (either a Minor Grading Permit or a Conditional Use Permit). The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.*
- 10. All of the above conditions must be complied with prior to the issuance of a zoning permit for the proposed remodeling and expansion of the residence.*

The reasons for approval are as follows:

Although the offset of the existing residence won't change, the required lot line adjustment or maintenance easement will allow the west side of the residence to be maintained. The lakeside portion of the property will be improved by removal of the non-conforming decks and hot tub and by either removing or screening the retaining walls. A hardship exists because it would be unnecessarily burdensome to require the removal or relocation of the residence, which is a substantial structure, in good condition, in order to permit a slightly larger residence.

The motion was seconded by Mr. Schmidt and carried with four yes votes.

The staff's recommendation was for denial of the request. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property already contains a single-family residence, so denial of the requested variance would not prevent the owner from using the property for a permitted purpose, i.e. for a single-family residence. Further, denial of the requested variance would not be unnecessarily burdensome because the existing residence, which has been extensively remodeled in the past, provides a reasonable use of the property. Finally, approval of this request would only serve to perpetuate the existence of an extremely non-conforming residence that encroaches over the side lot line, which is not in conformance with the purpose and intent of the Ordinance. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:28 p.m.*

The motion was seconded by Mr. Schmidt and carried with four yes votes. Note: Mr. Shultz excused himself from the Board of Adjustment meeting prior to the deliberations on the last three cases because he was the petitioner and/or the architect in those cases. Therefore, he was not present for the vote to adjourn.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment